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Attorney Docket No. CSM-002

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Alfred Eisenberg)	Confirmation No.: 2157
)	
Appl. No.: 10/007,129)	Art Unit: 2151
)	
Filed: 12/03/2001)	Examiner: K. B. Divecha

Title: Initiation and Support of Video Conferencing Using Instant Messaging

United States Patent and Trademark Office
Commissioner for Patents
Washington, D.C. 20231

APPEAL BRIEF

Sir:

Appellant respectfully submits this Appeal Brief in the appeal from the Office Action dated August 22, 2006, (hereinafter referred to as the "Office Action") in which all claims were finally rejected. Appellant filed its Notice of Appeal on February 13, 2007.

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1. Real Party in Interest

The real party in interest is Radvision Ltd., the assignee of all right and interest in and to the present application and any patent issuing thereon.

2. Related Appeals and Interferences

There are no appeals or interferences related to the present application and its appeal.

3. Status of the Claims

Claims 1-54 are pending in the present application. Claims 1-54 (all) were finally rejected in the Office Action. Claims 1-54 (all) are appealed.

4. Status of Amendments

No amendment after Final Rejection has been submitted. All amendments have been entered.

5. Summary of Claimed Subject Matter

The present invention is a “system and method for combining the convenience of instant messaging with video conferencing capability to allow a user to initiate a video conference using [instant messaging].” (Summary of the Invention, page 2, lines 6-7.) Most simply stated, in the context in which two or more users of an instant messaging (IM) system decide, during the exchange of instant messages, to initiate a video conference, a special instant message may be sent causing the IM server managing their communications to communicate with a video conference server to initiate the video conference.

While exceptionally convenient for the participants, generally, this initiation of a video conference by way of an IM message is not a trivial exercise for the underlying systems to implement. For example, a system providing this feature must maintain knowledge about the participants, such as contact data, preferred communication modes, protocols, and networks, and effectively communicate such information to a video conference server (which itself is specifically adapted to receive same from another server) together with appropriate instructions to cause the video conference server to properly allocate resources to support the video conference. The system effectively removes the requirement that a user visit a dedicated website or otherwise step out of the instant messaging framework to initiate or participate in a video

conference. Instead a user is provided with the ability to initiate a video conference directly while using one of a number of popular IM services.

This feature operates, for example, as explained in the specification at page 6, lines 12-15. "When an instant message setting up a video conference is sent by a client 12 via its IM client module 16, the video conference module 18 detects the message. It extracts information from the message which is used to set up the video conference automatically through the CTM server 20." That is, the IM server detects a request for a video conference received in the form of an IM message, collects certain required information, then delivers that information with a request to initiate a video conference to second server such as a video conferencing server, which then handles the allocation of resources and the establishment and maintenance of the video conference.

In the language of claim 1, for example, "a video conference resource allocator ... adapted to allocate video conference resources in said second server in response to a request for a video conference from said instant messaging server (claim 1, lines 8-11)" reflects this feature of initiating a video conference from within an IM service. (See also claim 28, lines 10-12.) Thus, the claimed invention highlights the special capabilities of the IM server and the cooperative relationship between an IM server and video conferencing server.

6. Grounds of Rejection to be Reviewed on Appeal

The following questions form the basis for this appeal, and are addressed in order in the Argument section immediately following.

A. Does the combination of US Patent 6,564,261 (Gudjonsson) in view of US Patent 5,793,365 (Tang) and further in view of US Patent 6,020,915 (Bruno) teach each and every limitation of claims 1-6, 9-14, 17-24, 27-33, 36-41, 44-51, and 54, and thus render those claims unpatentable under 35 U.S.C. 103(a)?

B. Does the combination of US Patent 6,564,261 (Gudjonsson) in view of US Patent 5,793,365 (Tang), US Patent 6,020,915 (Bruno), and further in view of US Patent 6,640,239 (Gidwani) teach each and every limitation of claims 7-8, 15-16, 25-26, 34-35, 42-43, and 52-53, and thus render those claims unpatentable under 35 U.S.C. 103(a)?

7. Argument

A. The combination of US Patent 6,564,261 (Gudjonsson) in view of US Patent 5,793,365 (Tang) and further in view of US Patent 6,020,915 (Bruno) does not teach each and every limitation of claims 1-6, 9-14, 17-24, 27-33, 36-41,44-51, and 54, and thus fails to render those claims unpatentable under 35 U.S.C. 103(a)

1. *The references, alone and in combination, fail to teach "a video conference resource allocator...adapted to allocate video conference resources in [a] second server in response to a request for a video conference from [an] instant messaging server."*

Initially, it is noted that the Office Action appears to make the argument that applicant's invention is merely the combination of two client nodes, a video server, an instant messaging server, and a video conference resource allocator. However, as will be pointed out, the present invention involves much more than this mere collection of parts. In one embodiment, the present invention is a system which permits the allocation of video conference resources based upon the interpretation of an instant message from one of the two nodes. That is, the instant message server and the video

conference resource allocator are designed to work together to enable the initiation of a video conference by the instant messaging server in response to a request therefor. This is not a function provided by the mere combination of known parts.

Nor is this merely a feature discussed in the specification upon which applicant relies. Claim 1 of the present application includes the limitation:

a video conference resource allocator, communicatively coupled to said instant messaging server and said second server, said video conference resource allocator adapted to allocate video conference resources in said second server in response to a request for a video conference from said instant messaging server...

Claim 1, lines 9-11 (emphasis added). See also the nearly identical language in claim 28, lines 9-11. This is one of the features which provide the ability to establish a video conference using an instant messaging utility.

While Gudjonsson teaches a network management system capable of establishing communication sessions between users, it does not disclose or suggest an IM server configured to initiate a video conference in response to an instant message communication sent by a user. The reference does not teach or suggest the allocation of video conference resources in response to a request for a video conference from an instant messaging server. And overall, as acknowledged in the Office Action,

Gudjonsson does not teach an instant message server capable of causing the initiation of a video conference by way of instant messaging.

Tang teaches a user interface for collaborative work which provides users with a “chat room” feature. Whether or not communications within a chat room are “instant messages”, Tang makes no mention of the ability to launch any service, particularly a video conference, using a communication uniquely within a chat room. And, there is no suggestion in Tang that it is an IM server requests a video conference. While Tang very well may suggest initiating a vide conference using its gallery mechanism, as asserted in the office action, there is nothing in Tang which suggests the underlying communication in that gallery mechanism is through an instant messaging server. Tang makes no suggestion that its gallery mechanism is an instant messaging server. Indeed, the simplicity of communications through an instant messaging server would likely not support the broad functionality attributed to the gallery mechanism in Tang. In any event, there is no teaching of employing an instant messaging server in Tang.

The Office Action appears to make a new and novel argument with regard to whether Tang teaches the feature of allocating video conference resources in response to an instant message. It appears to appellant that the Office Action for the first time in this case argues that:

- 1) Appellant's specification makes no clear mention of the allocation of video resources in response to an instant message,
- 2) But such action may be assumed based on the mention of a video conference allocator for creating a video conference,
- 3) Tang also makes no clear mention of the allocation of video resources in response to an instant message,
- 4) But such action may be assumed based on Tang's mention of providing various communication services through a contact button...such as video conferencing,
- 5) Therefore, Tang discloses the claimed feature.

While there are several errors in this line of reasoning, first and foremost is that it is impermissible to assume that Tang teaches a claim limitation. One specific limitation in question is, for example, "allocat[ing] video conference resources in said second server in response to a request for a video conference from said instant messaging server." (Claim 1, lines 11-12.) Again, there is nothing in Tang which suggests the underlying communication in its gallery mechanism is through an instant messaging server. There are myriad ways Tang could initiate a video conference from it's gallery in which no IM server is involved. It is improper without such a suggestion to assume it is

present in the Tang reference. See, In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed Cir. 1992). And, the burden is on the examiner to show that the reference actually teaches the claim limitation. See, Ex parte Levy, 17 U.S.P.Q.2d 1461 (BPAI 1990).

Thus, the Tang reference does not teach or suggest “a video conference resource allocator adapted to allocate video conference resources ... in response to a request for a video conference from said instant messaging server.” The Office Action states that it would have been obvious to one of ordinary skill in the art to modify the teachings of Gudjonsson to use a chat server taught by Tang to provide text communication between users. However, each reference is still missing a limitation of the claims of the present application, namely “a video conference resource allocator adapted to allocate video conference resources ... in response to a request for a video conference from said instant messaging server.” Therefore, such a combination of the two references would likewise fail to teach or suggest that limitation.

The Office Action cites Bruno for its teaching of a video conference resource allocator. Bruno teaches a system for including a user of a Plain Old Telephone System (POTS) devices (e.g., a standard telephone handset and fax machine) in a video conference, despite the lack of a proper protocol on the POTS devices. There is no mention in Bruno of the use of instant messaging, chat, or similar non-video, non-image, and non-voice communications for any purpose. Initiation of video conferences are

handled by Bruno in a fairly tradition manner, via a resource allocator referred to as a MRCS, for example by calling the resource provider, or by a direct communication between two multimedia-enabled workstations (see col. 4, line 67, to col. 5, line 16).

There is no mention or suggestion in Bruno of any mechanism for initiating a video conference via any sort of messaging service, and therefore Bruno cannot add to Gudjonsson or Tang that which those references are lacking in terms of the present invention, namely “a video conference resource allocator adapted to allocate video conference resources ... in response to a request for a video conference from said instant messaging server.”

Neither Gudjonsson, Tang, nor Bruno, nor the combination of these three teach a system in which a video conference may be initiated by an instant messaging service. In terms of the claims, it is therefore evident that there is no teaching or suggestion of “a video conference resource allocator adapted to allocate video conference resources ... in response to a request for a video conference from said instant messaging server.” As there is at least one limitation found in claims 1 and 28 of the present application which is not found in the cited references, taken alone or in combination, the cited references cannot be an adequate basis for a *prima facie* case of obviousness under 35 U.S.C. 103. Accordingly, claims 1 and 28 are patentably distinct from these cited references. Applicant therefore respectfully requests removal of the rejections of claims

1 and 28 in light of these references, and an indication of the allowability of those claims.

Likewise, since claims 2-6, 9-14, 17-24, and 27 depend directly or indirectly from claim 1, and claims 29-33, 36-41, 44-51, and 54 depend directly or indirectly from claim 28, these claims contain all limitations of their respective independent base claims, and are patentably distinct from the cited references by the same rationale. Accordingly, no *prima facie* case of obviousness has been made, and applicant respectfully requests removal of the rejections of claims 1-6, 9-14, 17-24, 27-33, 36-41, 44-51, and 54, and requests their reconsideration and allowance.

2. *The references, alone and in combination, fail to teach “a video conference resource allocator... adapted to communicate to the at least two nodes, via said instant messenger server, resource information enabling the at least two client nodes to join the video conference.”*

Again, while Gudjonsson teaches a network management system capable of establishing communication sessions between users, it does not disclose or suggest an IM server configured to initiate a video conference in response to an instant message

communication sent by a user. More specifically, the reference does not teach or suggest that “at least two client nodes [communicate], via said instant message server, resource information enabling the at least two client nodes to join [a] video conference.” (claim 1, lines 12-14, and claim 28, lines 14-16.)

Nor does Tang teach or suggest such a video conference resource allocator communicating to two nodes via an IM server resource information enabling those nodes to join a video conference. While Tang may provide the initiation of a video conference via its gallery mechanism, Tang is silent as the mechanism for such initiation, and specifically lacks any teaching or suggestion that resource information needed by a node to join a video conference be provided via an IM server.

And once again, there is no mention or suggestion in Bruno of any mechanism for initiating a video conference via any sort of messaging service, and therefore Bruno cannot add to Gudjonsson or Tang that which those references are lacking in terms of the present invention, namely that “at least two client nodes [communicate], via said instant message server, resource information enabling the at least two client nodes to join [a] video conference.”

As Gudjonsson, Tang, and Bruno, alone and in combination with one another fail to teach a video conference resource allocator communicating to two nodes via an IM server resource information enabling those nodes to join a video conference, those

reference, alone and in combination cannot form the basis of a *prima facie* case of obviousness of claims 1 and 28, which contain such a limitation. Accordingly, applicant respectfully requests removal of the rejections of claims 1 and 28 and their prompt allowance.

Likewise, since claims 2-6, 9-14, 17-24, and 27 depend directly or indirectly from claim 1, and claims 29-33, 36-41, 44-51, and 54 depend directly or indirectly from claim 28, these claims contain all limitations of their respective independent base claims, and are patentably distinct from the cited references by the same rationale. Accordingly, applicant respectfully requests removal of the rejections of claims 1-6, 9-14, 17-24, 27-33, 36-41, 44-51, and 54, and requests their reconsideration and allowance.

B. The combination of US Patent 6,564,261 (Gudjonsson) in view of US Patent 5,793,365 (Tang), US Patent 6,020,915 (Bruno), and further in view of US Patent 6,640,239 (Gidwani) does not teach each and every limitation of claims 7-8, 15-16, 25-26, 34-35, 42-43, and 52-53, and thus fails to render those claims unpatentable under 35 U.S.C. 103(a)

Gidwani discloses the configuration of a network switching architecture. It discloses no details of instant messaging or video conferencing. It does not even allude to the difficulties of launching one type of communication service (i.e., video

conferencing) using messaging from another type of communication service (i.e., instant messaging). From the above, it is clear that the Gudjonsson, Tang, and Bruno references taken alone or in combination fail to teach or suggest “a video conference resource allocator adapted to allocate video conference resources ... in response to a request for a video conference from said instant messaging server” (claim 1, lines 9-15, and nearly identical language in claim 28, lines, 9-15). Gidwani clearly fails to teach this limitation as well.

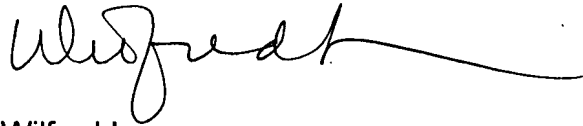
Therefore, Gidwani fails to overcome the aforementioned shortfalls of Gudjonsson, Tang, and Bruno in terms of establishing a *prima facie* case of obviousness of claims 1 and 28, as well as the claims depending from claims 1 and 28. As claims 7, 8, 15, 16, 25, and 26 depend directly or indirectly from claim 1 and claims 34, 35, 42, 43, 52, and 53 depend directly or indirectly from claim 28, they contain all of the limitations of claims 1 and 28, respectively. Thus, no *prima facie* case of obviousness of those claims has been made, and accordingly those claims are patentably distinct from the cited references for at least the reasons enumerated above with regard to claims 1 and 28. Accordingly, applicant respectfully requests removal of the rejections of claims 7, 8, 15, 16, 25, 26, 34, 35, 42, 43, 52, and 53, and a remand for their reconsideration and allowance.

8. Summary and Conclusion

In summary, the applied references fail to teach or suggest all limitations found in rejected claims 1-54. Based on the fact that there is at least one limitation in each rejected claim not found in the cited reference, no *prima facie* case of obviousness under 35 U.S.C. §103(a) has been made.

Accordingly, applicant requests that the Board reverse the rejections of all claims, with remand to pass this application to allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wilfred Lam', with a long horizontal flourish extending to the right.

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APPENDIX 1 – Appealed Claims

1. A system, which may be used with at least two client nodes which are adapted to communicate with one another via an instant messaging utility and further which are adapted to communicate with one another via a video conference utility, comprising:

an instant messaging server for supporting instant messages between the at least two client nodes;

a second server for supporting a video conference between the at least two client nodes; and

a video conference resource allocator, communicatively coupled to said instant messaging server and said second server, said video conference resource allocator adapted to allocate video conference resources in said second server in response to a request for a video conference from said instant messaging server, such that a video conference may be initiated between the at least two client nodes, and further adapted to communicate to the at least two client nodes, via said instant message server, resource information enabling the at least two client nodes to join the video conference.

2. The system of claim 1, wherein at least one of the client nodes participates in the video conference via the public switched telephone network (PSTN).

3. The system of claim 1, wherein at least one of the client nodes participates in the video conference via cellular communication.

4. The system of claim 1, wherein at least one of the client nodes participates in the video conference via a computer.
5. The system of claim 1, wherein at least one of the client nodes participates in the video conference via a network gateway.
6. The system of claim 1, wherein at least one of the client nodes participates in the video conference via a video conferencing standard protocol.
7. The system of claim 1, wherein at least one of the client nodes participates in the video conference via an ISDN standard protocol.
8. The system of claim 1, wherein at least one of the client nodes participates in the video conference via an ATM standard protocol.
9. The system of claim 1, wherein the instant messaging server contains information related to communication modes of the client nodes used to participate in the video conference.
10. The system of claim 9, wherein the communication modes comprise communication via the public switched telephone network (PSTN).

11. The system of claim 9, wherein the communication modes comprise cellular communication.

12. The system of claim 9, wherein the communication modes comprise communication via a computer.

13. The system of claim 9, wherein the communication modes comprise communication via a gateway.

14. The system of claim 9, wherein the communication modes comprise communication via a video conferencing standard protocol.

15. The system of claim 9, wherein the communication modes comprise communication via an ISDN standard protocol.

16. The system of claim 9, wherein the communication modes comprise communication via an ATM standard protocol.

17. The system of claim 1, further comprising a data base communicatively coupled to said instant messaging server for storing information related to the client nodes used to initiate the video conference.

18. The system of claim 17, wherein the data base receives the information from the instant messaging server.

19. The system of claim 17, wherein the information is related to communication modes of the client nodes used to participate in the video conference.

20. The system of claim 19, wherein the communication modes comprise communication via the public switched telephone network (PSTN).

21. The system of claim 19, wherein the communication modes comprise cellular communication.

22. The system of claim 19, wherein the communication modes comprise communication via a computer.

23. The system of claim 19, wherein the communication modes comprise communication via a gateway.

24. The system of claim 19, wherein the communication modes comprise communication via a video conferencing standard protocol.

25. The system of claim 19, wherein the communication modes comprise communication via an ISDN standard protocol.

26. The system of claim 19, wherein the communication modes comprise communication via an ATM standard protocol.

27. The system of claim 1, wherein the second server is a network video conferencing server which supports video conferences using a network video conferencing protocol.

28. A communication method which may be employed in a system including at least two client nodes which are adapted to communicate with one another via an instant messaging utility and further which are adapted to communicate with one another via a video conference utility, comprising:

providing an instant messaging server for supporting instant messages between the at least two client nodes;

providing a second server for supporting a video conference between the at least two client nodes; and

providing a video conference resource allocator, communicatively coupled to said instant messaging server and said second server, said video conference resource allocator adapted to allocate video conference resources in said second server in response to a request for a video conference from said instant messaging server, such

that a video conference may be initiated between the at least two client nodes, and further adapted to communicate to the at least two client nodes, via said instant message server, resource information enabling the at least two client nodes to join the video conference.

29. The method of claim 28, wherein at least one of the client nodes participates in the video conference via the public switched telephone network (PSTN).

30. The method of claim 28, wherein at least one of the client nodes participates in the video conference via cellular communication.

31. The method of claim 28, wherein at least one of the client nodes participates in the video conference via a computer.

32. The method of claim 28, wherein at least one of the client nodes participates in the video conference via a network gateway.

33. The method of claim 28, wherein at least one of the client nodes participates in the video conference via a video conferencing standard protocol.

34. The method of claim 28, wherein at least one of the client nodes participates in the video conference via an ISDN standard protocol.

35. The method of claim 28, wherein at least one of the client nodes participates in the video conference via an ATM standard protocol.

36. The method of claim 28, wherein the instant messaging server contains information related to communication modes of the client nodes used to participate in the video conference.

37. The method of claim 36, wherein the communication modes comprise communication via the public switched telephone network (PSTN).

38. The method of claim 36, wherein the communication modes comprise cellular communication.

39. The method of claim 36, wherein the communication modes comprise communication via a computer.

40. The method of claim 36, wherein the communication modes comprise communication via a gateway.

41. The method of claim 36, wherein the communication modes comprise communication via a video conferencing standard protocol.

42. The method of claim 36, wherein the communication modes comprise communication via an ISDN standard protocol.

43. The method of claim 36, wherein the communication modes comprise communication via an ATM standard protocol.

44. The method of claim 28, further comprising communicatively coupling a data base to said instant messaging server for storing information related to the client nodes used to initiate the video conference.

45. The method of claim 44, wherein the data base receives the information from the instant messaging server.

46. The method of claim 44, wherein the information is related to communication modes of the client nodes to be used to participate in the video conference.

47. The method of claim 46, wherein the communication modes comprise communication via the public switched telephone network (PSTN).

48. The method of claim 46, wherein the communication modes comprise cellular communication.

49. The method of claim 46, wherein the communication modes comprise communication via a computer.

50. The method of claim 46, wherein the communication modes comprise communication via a gateway.

51. The method of claim 46, wherein the communication comprise communication via a video conferencing standard protocol.

52. The method of claim 46, wherein the communication modes comprise communication via an ISDN standard protocol.

53. The method of claim 46, wherein the communication modes comprise communication via an ATM standard protocol.

54. The method of claim 28, wherein the second server is a network video conferencing server which supports video conferences using a network video conferencing protocol.

APPENDIX 2 – Evidence of Record

No additional evidence is being submitted with this appeal.

APPENDIX 3 – Related Proceedings

This application is involved in no other proceedings related to this appeal.